1447

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. ~~823~~ 90.

W. C. LYKINS AND E. W. W. LYKINS, PLAINTIFFS IN ERROR,

vs.

MRS. R. McGRATH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED JUNE 21, 1900.

(17,808.)

(17,808.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 323

W. C. LYKINS AND E. W. W. LYKINS, PLAINTIFFS IN ERROR,

vs.

MRS. R. McGRATH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 15, 1900.

1 THE U. S. OF AMERICA:

To Mrs. R. McGrath, Greeting:

You are hereby cited and admonished to appear in the Supreme Court of the United States sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the third division of the judicial district of Kansas, wherein W. C. Lykins and E. W. W. Lykins are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Hon. William C. Hook, judge of the circuit court of the United States for the district of Kansas, this 11th day of May, in the year of our Lord one thousand nine hundred.

WILLIAM C. HOOK,
United States District Judge for the District of Kansas.

1½ *U. S. Marshal's Return.*

Received this writ at Ft. Scott, Kansas, May 11th, A. D. 1900, and executed same May 11th, 1900, at Ft. Scott, Kansas, by delivering personally to Frank M. Sheridan, attorney for defendant in error, a true and certified copy of the within writ, with all the endorsements thereon.

W. E. STERNS,
U. S. Marshal,
By W. C. MOONEY, *Deputy.*

Fees, $2.00.

[Endorsed:] No. 174. W. C. Lykins and E. W. W. Lykins, pl'ffs, *vs.* Mrs. R. McGrath, def't. Citation. Filed May 16th, 1900. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the hon. the judge of the circuit court of the United States for the third division of the judicial district of Kansas, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the November, 1899, term thereof, between W. C. Lykins and E. W. W. Lykins, plaintiffs, *vs.* Mrs. R. McGrath, defendant, a manifest error hath happened, to the great damage of the said W. C. Lykins and E. W. W. Lykins, as by their petition appears, we, being willing that error, if any hath been, should be duly corrected and a full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that *you* then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States

Supreme Court, together with this writ, so that *we* have the said record and proceedings aforesaid at the city of Washington, D. C., and filed in the office of the clerk of the United States Supreme Court on or before the — day of ——, 1900, to the end that, the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12 day of May, in the year of our Lord one thousand nine hundred.

Issued at my office, in the city of Fort Scott, with the seal
3 of the circuit court of the United States for the third division of the judicial district of Kansas, dated as aforesaid.

{ The Seal of the Circuit Court of the United States, Third Division, District of Kansas, 1892. }

GEO. F. SHARITT,
Clerk Circuit Court United States, Third Division of the Judicial District of Kansas,
By S. P. MOSHER, *Deputy Clerk.*

Return to Writ.

UNITED STATES OF AMERICA,
Third Division of the Judicial District of Kansas, } *ss:*

In obedience to the command of the within writ I herewith transmit to the United States Supreme Court a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at my office, in the city of Fort Scott, this 12 day of May, A. D. 1900.

{ The Seal of the Circuit Court of the United States, Third Division, District of Kansas, 1892. }

GEO. F. SHARITT, *Clerk,*
By S. P. MOSHER, *Deputy Clerk.*

4 *Transcript.*

In the Circuit Court of the United States for the District of Kansas, Third Division.

W. C. LYKINS & E. W. W. LYKINS, Plaintiffs,
vs.
MRS. R. MCGRATH, Defendant.

Be it remembered that heretofore and on, to wit, the 18th day of March, A. D. 1899, came W. C. Lykins and E. W. W. Lykins, by H. H. McCluer, their attorney, and filed in said court their petition, and sued out of and under the seal of said court a writ of summons against Mrs. R. McGrath.

And the said petition is in the words and figures as follows:

In the Circuit Court of the United States for the District of Kansas, Third Division.

W. C. LYKINS and E. W. W. LYKINS, Plaintiffs,
vs.
MRS. R. MCGRATH, Defendant.

Complaint at Law for Possession of Real Estate.

Plaintiffs, W. C. Lykins and E. W. W. Lykins, for their cause of action against the defendant, Mrs. R. McGrath, state that they are members of the Peoria tribe of Indians and reside in the northern district of the Indian Territory, and that the defendant is a citizen of the United States and resides in the third division of district of Kansas.

That under and by virtue of the provisions of a treaty between the United States and the Kas-kas-kia, Peoria, and other confederated tribes of Indians, proclaimed August 10th, 1854, the southeast
5 quarter of section fifteen (15), in township seventeen (17) south of range twenty-three (23) east, in the State of Kansas, was patented to Ma-cha-co-me-yah, or David Lykins, a member of said Peoria tribe of Indians, being Peoria reservee No. fourteen (14); that the patent for said land contained a restriction on the sale of said land; that said restriction provided that said land could not be sold by said reservee or by his heirs except with the consent and approval of the Secretary of the Interior of the United States; that on or about the 14th day of August, 1864, the said reservee, Ma-cha-co-me-ah or David Lykins, departed this life intestate and left as his sole heirs his two sons, plaintiffs herein; that by virtue of the premises plaintiffs are the owners and entitled to the immediate possession of said land and have been ever since the said 14th day of August, 1864; that said land is of the value of $5,000.00.

Plaintiffs further state that on or about the 3rd day of June, 1864, the said reservee attempted to convey said land to one Baptiste Peoria by a deed of said date; that said deed was not approved by the Secretary of the Interior of the United States during the lifetime of the said reservee, but that same was after the death of the said reservee and on March 6th, 1865, presented to and approved by said Secretary without the knowledge or consent of these plaintiffs; that said deed, not having been approved by said Secretary during the lifetime of the said reservee, was and is inoperative and void; that the defendant is wrongfully in the possession of said land, claiming the same through successive conveyances from said Baptiste Peoria, and has been since the — day of ——, 1865.

That plaintiffs have been damaged by said unlawful holding of said land by the defendant in the sum of two thousand five
6 hundred dollars; that the value of the monthly rents and profits on said land is thirty dollars ($30.00) per month.

Plaintiffs therefore ask judgment against the said defendant for

the possession of said land, and for damages, monthly rents, and prophets and costs of suit.

W. C. LYKINS,
E. W. W. LYKINS, *Plaintiffs*,
By H. H. McCLUER, *Their Att'y.*

Endorsed on back: No. 174. W. C. Lykins *et al.*, pl'ffs. *vs.* Mrs. R. McGrath, def't. Complaint at law. Filed Mar. 18, 1899. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k. H. H. McCluer, att'y for pl'ffs.

In the Circuit Court of the United States, District of Kansas, Third Division.

W. C. LYKINS and E. W. W. LYKINS, Plaintiffs,)
vs.
MRS. R. MCGRATH, Defendant.)

To the clerk of the circuit court:

You will please issue summons in the above-entitled cause for the defendant, Mrs. R. McGrath, and deliver same to the marshal. Defendant lives about one mile east of Paola, Ks.

H. H. McCLUER,
Att'y for Pl'ffs.

Endorsed on back: No. 174. W. C. Lykins *et al. vs.* Mrs. R. McGrath. Precipe for summons. Filed Mar. 18, 1899. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k.

7 And the said summons and proof of service is in words and figures as follows, to wit:

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,)
District of Kansas, 3rd Division,) *ss:*

The United States of America to the marshal of the district of Kansas, Greeting:

You are hereby commanded to notify Mrs. R. McGrath (about one mile east of Paola, Kansas) that she has been sued by W. C. Lykins & E. W. W. Lykins, in the circuit court of the United States for the district of Kansas, and that unless she answers by the 20th day of April, A. D. 1899, the petition of the said W. C. Lykins and E. W. W. Lykins against her filed in the clerk's office of the said court, such petition will be taken as true and judgment rendered accordingly. You will make due return of this writ on the 30th day of March, A. D. 1899.

The Seal of the Circuit Court of the United States, Third Division, District of Kansas, 1892.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Fort Scott, in said district, this 18th day of March, A. D. 1899.

GEO. F. SHARITT, *Clerk*,
By S. P. MOSHER, *Dep. Clk.*

Suit brought for the recovery of money; amount claimed, $25,000.00.

Damages, for the possession of said land, monthly rents, and profits and costs of suit.

H. H. McCLUER,
Miami, I. Ty., Attorney for Plaintiffs.

8 Endorsed on back: No. 174. Circuit court of the United States, district of Kansas, 3rd division. W. C. Lykins and E. W. W. Lykins *vs.* Mrs. R. McGrath. Summons. Issued M'ch 18, 1899. Returnable M'ch 30, 1899. Filed Mar. 28, 1899. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k. H. H. McCluer, Miami, I. Ty., attorney for plaintiffs.

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ March the 22nd, 1899, and served same on the within-named Mrs. R. McGrath by leaving a true and certified copy, with all the endorsements thereon, of the within writ at her usual place of residence, with an adult member of the family, at Paola, Kansas, Sat., March 25th, A. D. 1899.

W. E. STERNE,
U. S. Marshal,
By W. C. MOONEY, *Deputy.*

Marshal's fee and costs, $5.66.

And afterwards and on, to wit, the 3rd day of May, A. D. 1899, came the defendant, by her attorneys, and in open court asked permission to file her demurrer to plaintiffs' petition; thereupon the court made the following order, which was filed and duly entered of record:

In the Circuit Court of the United States for the District of Kansas, Third Division.

W. C. LYKINS and E. E. W. LYKINS, Plaintiffs,
v.
MRS. R. C. MCGRATH, Defendant.

Order.

On application of the defendant she is hereby given permission to file a demurrer to the petition of the plaintiffs on this day.

WILLIAM C. HOOK, *Judge.*

9 Endorsed on back: No. 174. W. C. Lykins *et al. v.* R. C. McGrath. Order permitting def't to file demurrer to petition. Filed May 3, 1899. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k. J. B., 147.

And afterwards and on, to wit, the 3rd day of May, 1899, came the defendant, Mrs. R. McGrath, by her attorneys, F. M. Sheridan & W. C. Perry, and file their demurrer to plaintiffs' petition; which demurrer is in the words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Kansas, Third Division.

W. C. LYKINS and E. W. W. LYKINS, Plaintiff-,
v.
MRS. R. C. MCGRATH, Defendant.

Demurrer to the Petition.

Now comes the defendant and demurrs to the petition of the plaintiffs in the action above entitled for the reason that said petition does not state facts sufficient to constitute a cause of action in favor of the plaintiff- or either of them and against the defendant.

F. M. SHERIDAN,
W. C. PERRY,
Att'y- for Defendant.

Endorsed on back: No. 174. W. C. Lykins *et al. v.* R. C. McGrath. Demurrer to petition. Filed May 3, 1899. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k.

10 And afterwards and, to wit, on the 3rd day of May, 1899, this cause came on for hearing upon the demurrer of the defendant to plaintiffs' petition, as follows, to wit:

W. C. LYKINS ET AL.
v.
R. C. MCGRATH.

Now, on this day, the action above entitled came on for hearing on the demurrer of the defendant to the petition of the plaintiffs. The plaintiffs appeared by their attorney, H. H. McCluer, and the defendants by their attorneys, Holmes & Perry and Frank M. Sheridan, and the court, being fully advised in the premises, doth now sustain said demurrer; to which ruling of the court the plaintiffs at the time duly excepted, and said plaintiffs, on their application, are given until August 1st next to file an amended petition, and the defendant is given until September 1st next to plead to said amended petition.

Endorsed on back: # 174. Journal entry. Filed May 3, 1899. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k. J. B., 148.

11 And afterwards and on, to wit, the 31st day of July, A. D. 1899, came the plaintiffs, by their attorneys, H. H. McCluer and Keene and Gates, and filed their amended petition herein, which is in the words and figures as follows, to wit:

UNITED STATES, *State of Kansas,* } ss:

In the United States Circuit Court for the District of Kansas, Third Division, Sitting at Fort Scott.

W. C. LYKINS and E. W. W. LYKINS, Plaintiffs,
vs.
MRS. R. C. MCGRATH, Defendant.

Amended Complaint.

Plaintiffs, W. C. Lykins and E. W. W. Lykins, for their cause of action against the defendant, Mrs. R. C. McGrath, state they are members of the Peoria tribe of Indians and reside in the northern district of the Indian Territory; that the defendant, Mrs. R. C. McGrath, is a citizen of the United States and resides in the third division of the United States court for the district of Kansas.

That under and by virtue of the provisions of a treaty between the United States of America and the Kas-kas-kia, Peoria, and other confederated tribes of Indians, concluded on the 30th day of May, 1854, proclaimed August 10th, 1854, and act of Congress approved March 3rd, 1859 (U. S. Statutes, vol. 11, page 430), the southeast quarter of section No. fifteen (15), in township No. seventeen (17) south of range No. twenty-three (23) east, in the State of Kansas, was conveyed by the United States of America by letters patent to Ma-cha-co-me-yah, or David Lykins, a member of the said Peoria tribe of Indians, being "Peoria reservee No. 14." A certified copy of said patent is herewith filed, marked Exhibit "A," and made a part hereof.

12 That the said patent for the said land, issued as aforesaid, under and by virtue of the 11th section of the said act of Congress approved March 3rd, 1859, contained a clause restraining the alienation of the said land by the said reservee or by his heirs without the consent of the Secretary of the Interior of the United States, which said restriction was as follows, viz: "That said tracts shall never be sold or conveyed by the grantee or his heirs without the consent of the Secretary of the Interior for the time being."

That the said grantee, Ma-cha-co-me-yah, or David Lykins, never sold or conveyed the said land, with the consent of the Secretary of the Interior, during his lifetime, and on or about the 14th day of August, 1864, departed this life intestate, and left surviving him, as his sole heirs-at-law, his two children, plaintiffs herein, and that at his death the said land descended to and became the property of plaintiffs, who now own the same and are entitled to the immediate and exclusive possession thereof and have been ever since the said 14th day of August, 1864.

Plaintiffs further state that on or about the 3rd day of June, 1864, the said reservee, Ma-cha-co-me-yah, or David Lykins, attempted to convey the said land to one Baptiste Peoria by a deed of said date without the consent of the Secretary of the Interior; that the Secretary of the Interior did not give his consent to the said conveyance

in any manner or approve the same during the lifetime of the said reservee, and that the said reservee at no time asked the consent of the Secretary to make the said conveyance and never in any way requested his approval of the same after it was made, but that the same was after the death of the said reservee and on March 10th, 1865, presented to the said Secretary and by him approved; that the said presentation and approval was without the knowledge or consent of these plaintiffs; that the said conveyance, having been made without the consent of the Secretary of the Interior and never having been approved by him during the lifetime of the
13 grantor, was and is inoperative and void; that the defendant is now claiming the said land through successive conveyances from the said Baptiste Peoria, and is in the unlawful possession of the same and has been since the — day of ——, 1865.

That plaintiffs have been damaged by the said unlawful holding of said land by the said defendant in the sum of twenty-five hundred dollars; that the value of the said land is five thousand dollars, and the value of the monthly rents and profits is thirty dollars per month.

Plaintiffs therefore ask judgment for the possession of the said land and for damages, as aforesaid, and said monthly rents and profits, and for costs of suit.

H. H. McCLUER &
KEENE & GATES,
Attorneys for Plaintiff.

"EXHIBIT A."

4–146.

THE UNITED STATES OF AMERICA:

KASKASKIA and PEOR-A, PIANKESHAN and WEAS. No. 14.

To all to whom these presents shall come, Greeting:

Whereas by the 2nd and 3rd articles of the treaty concluded on the 30th day of May, A. D. 1854, by the commission on the part of the United States and certain delegates of the united tribes of Kaskaskia and Peoria, Piankeshan and Wea Indians, it is agreed that selections of lands shall be made for individuals and heads of families of said united tribes;

And whereas a return, dated 31st August, 1858, from the Commissioner of Indian Affairs has been made to the General Land Office, accompanied by "Reservation Book A," whereby it appears that on the 28th August, 1858, the Secretary of the Interior approved for Ma-cha-co-me-yah, or David Lykins, the following selection, viz., the northwest quarter of section twenty-three (160 acres), the southwest quarter of section fourteen (160 acres), the southeast quarter of section fifteen (160), the southwest quarter of section fifteen (160 acres), and the northeast quarter of section twenty-two (160 acres), all in township seventeen south of range twenty-three east of the sixth

principal meridian in Kansas, containing in the ag- eight
14 hundred acres:

Now know ye that the United States of America, in consideration of the premises and pursuant to the provisions of the treaty aforesaid, have given and granted and by these presents do give and grant unto the said Ma-cha-come-yah, or David Lykins, and to his heirs the tracts of land above described on the condition, as prescribed by the Secretary of the Interior under the provisions of the 11th section of the act of Congress approved March 3rd, 1859 (U. S. Statutes, vol. 11, page 430), that the said tracts "shall never be sold or conveyed by the grantee or his heirs without the consent of the Secretary of the Interior for the time being;" to have and to hold the said tracts or parcels of land, with the appurtenances, unto the said Ma-cha-come-yah, or David Lykins, and to his heirs and assigns forever, with the condition aforesaid.

In testimony whereof I, James Buchanan, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this first
[L. S.] day of November, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-fourth.

By the President:

JAMES BUCHANAN,
By J. B. LEONARD, *Secretary.*

J. N. GRANGER,
Recorder of the General Land Office.

Rec., vol. —, page 14.

Endorsed on back: No. 174. W. C. Lykins *et al. vs.* Mrs. R. M. McGrath. Amended petition. Filed July 31, 1899. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k. H. H. McCluer & Keene & Gates, att'y- for pl'ff-.

And afterwards and on, to wit, the 23d day of August, A. D. 1899, came the defendant, by her attorneys, Holmes & Perry & Frank M. Sheridan, and files her demurrer to plaintiff's amended petition, which is in the words and figures as follows, to wit:

15 In the Circuit Court of the United States within and for the District of Kansas, Third Division.

W. C. LYKINS and E. W. W. LYKINS, Plaintiffs,
v.
MRS. R. C. MCGRATH, Defendant.

Demurrer to the Amended Petition.

Now comes the defendant and demurs to the amended petition of the plaintiff in the action above entitled for the reasons following, to wit:

1. Said petition does not state facts sufficient to constitute a cause of action in favor of the plaintiffs or either of them and against the defendant.

2. Said petition on its face shows that the pretended cause of action therein set forth is barred by the 4th clause of section 10 of chapter 95 of volume 2 of the General Statutes of Kansas 1897, in that this action was not commenced within fifteen years from the time the alleged cause of action accrued to the plaintiffs.

Wherefore the defendant prays judgment against the plaintiffs for her costs.

HOLMES & PERRY,
FRANK M. SHERIDAN,
Attorneys for Plaintiffs.

Endorsed on back: No. 174. W. C. Lykins and E. W. W. Lykins *v.* Mrs. R. C. McGrath. Demurrer to amended petition. Filed Aug. 23, 1899. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k. Holmes & Perry, attorneys-at-law, Kansas City, Mo.

16 And afterwards and on, to wit, the 22nd day of November, A. D. 1899, at the November, A. D. 1899, term of said court, this cause came on for hearing on the demurrer of the defendant to the plaintiffs' amended petition, as follows, to wit:

In the Circuit Court of the United States for the District of Kansas, Third Division.

W. C. and E. W. LYKINS, Plaintiffs,
vs.
MRS. R. MCGRATH, Defendant.

Order.

Now, on this 22nd day of November, 1899, the action above entitled came on for hearing on the demurrer of the defendant to the amended petition of the plaintiffs, and the court, having heard the argument of counsel and being fully advised in the premises, doth now hereby sustain said demurrer; to which ruling of the court the plaintiffs duly excepted.

And said plaintiffs, not desiring to amend their petition, but announcing that they stood thereon, final judgment in favor of, on the merits and for costs, was, and hereby is, awarded, for which let execution issue.

JNO. A. WILLIAMS, *Judge.*

Endorsed on back: No. 174. W. C. Lykins *v.* Mrs. R. McGrath. Judgment entry. Filed Nov. 22, 1899. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k. Jour. B., p. 191.

17 And on, to wit, the 8th day of May, 1900, came again the said plaintiffs, by their attorneys aforesaid, and filed in said court and said cause their bond, and sued out of said court a writ of

error and citation to the Supreme Court of the United States, and said bond is in words and figures as follows, to wit:

Know all men by these presents that we, W. C. Lykins and E. W. W. Lykins and C. A. Middaugh, are held and firmly bound unto Mrs. R. McGrath in the full and just sum of two hundred dollars, to be paid to the said Mrs. R. McGrath, her heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of May, in the year of our Lord one thousand nine hundred.

Whereas lately, at the November term, A. D. 1899, of the circuit court of the United States for the third division of the judicial district of Kansas, in a suit depending in said court between W. C. Lykins and E. W. W. Lykins, plaintiff-, and Mrs. R. McGrath, defendant, judgment was rendered against the said plaintiffs, W. C. Lykins and E. W. W. Lykins, and the plaintiffs, W. C. Lykins and E. W. W. Lykins, *has* obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Mrs. R. McGrath, citing and admonishing her to be and appear in the Supreme Court of the United States sixty days from and after the date of said citation:

Now, *on* the condition of the above obligation is such that if the said plaintiffs, W. C. Lykins and E. W. W. Lykins, shall prosecute said writ of error to effect and answer all damages and cost if they
18 fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

W. C. LYKINS. [SEAL.]
E. W. W. LYKINS. [SEAL.]
C. A. MIDDAUGH. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Approved by—
WILLIAM C. HOOK, *Judge.*

STATE OF KANSAS, } ss:
Cherokee County, }

C. A. Middaugh, of lawful age, being duly sworn, on his oath says that he is a resident of Cherokee county, Kansas, and that he is worth over and above all of his exemptions and liabilities more than the sum of two hundred dollars, and that same is in property in said county.

C. A. MIDDAUGH.

Subscribed and sworn to before me this 10th day of May, 1900.

H. A. HICKS,
Notary Public.

[L. S.]

My commission expires Nov. 25th, 1900.

Endorsed on back: No. 174. United States circuit court, third division of the judicial district of Kansas. W. C. Lykins and E. W. W. Lykins, pl'tffs, *vs.* Mrs. R. McGrath. Bond, $200.00. Filed May 8, 1900. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k.

19 In the Circuit Court of the United States for the District of Kansas, Third Division.

W. C. LYKINS and E. W. W. LYKINS, Plaintiffs,
vs.
MRS. R. MCGRATH, Defendant. } No. 147.

Upon application of the plaintiffs and by consent of the defendant herein, the order made in this cause on April 26, 1900, fixing the supersedeas bond at five hundred dollars is hereby modified so as to read two hundred dollars.

May 8, 1900.

WILLIAM C. HOOK, *Judge.*

Endorsed on back: No. 174. Order of court. Filed May 8, 1900. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k.

Assignment of Errors.

In the Circuit Court of the United States for the District of Kansas, Third Division.

W. C. LYKINS and E. W. W. LYKINS, Plaintiffs,
vs.
MRS. R. MCGRATH, Defendant.

The plaintiffs in the above-entitled action, in connection with their petition for writ of error, make the following assignment of errors which they aver occur-ed upon the trial of said action, and which said errors appear on the record, to wit:

First. The court erred in sustaining defendant's demurrer to plaintiffs' original petition.

Second. The court erred in sustaining defendant's demurrer
20 to plaintiffs' amended petition.

Third. The court erred in rendering judgment in the action in favor of the defendant and against the plaintiffs.

Wherefore said plaintiffs pray that the judgment of said circuit court may be reversed and set aside; that said circuit court be directed to render judgment in favor of these plaintiffs; that they may be restored to all things they have lost in consequence of said judgment, and that they recover judgment for their costs in this behalf expended.

H. H. McCLUER,
Attorney for Plaintiffs.

Endorsed on back: No. 174. W. C. Lykins and E. W. W. Lykins *vs.* Mrs. R. McGrath. Assignment of errors. Filed Apr. 17th, 1900. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k.

Petition for Writ of Error.

In the Circuit Court of the United States for the District of Kansas, Third Division.

W. C. LYKINS and E. W. W. LYKINS, Plaintiffs,
vs.
MRS. R. MCGRATH, Defendant.

Come now the plaintiffs in the action above entitled and say that on or about the 22nd day of November, 1899, this court entered judgment herein in favor of the defendant and against the plaintiffs, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of the plaintiffs, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore these plaintiffs pray that a writ of error may issue in this behalf to the United States Supreme Court for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court.

H. H. McCLUER,
Attorney for Plaintiffs.

21 Endorsed on back: No. 174. W. C. & E. W. W. Lykins, *vs.* Mrs. R. McGrath. Petition for writ of errors. Filed Apr. 16, 1900. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k.

Order Allowing Writ of Error.

In the Circuit Court of the United States for the District of Kansas, Third Division.

W. C. LYKINS and E. W. W. LYKINS, Plaintiffs,
vs.
MRS. R. MCGRATH, Defendant.

On this 16th day of April, 1900, came the plaintiffs, by their attorney, and filed herein and presented to the court their petition praying for the allowance of a writ of error intended to be urged by them; praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Supreme Court, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error upon the plaintiffs giving bond according to law in the sum of five hundred dollars, which shall operate as a supersedeas bond.

WILLIAM C. HOOK, *Judge.*

21½ [Endorsed:] (*l*) No. 174. Order allowing writ of error. Filed Apr. 17th, 1900. Geo. F. Sharitt, clerk, by S. P. Mosher, dep. cl'k. O. B. A., 218.

22 UNITED STATES OF AMERICA, } ss:
District of Kansas, Third Division, }

I, Geo. F. Sharitt, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct transcript of the record and proceedings heretofore in said court and in a certain cause lately in said court pending wherein W. C. Lykins and E. W. W. Lykins were plaintiffs and Mrs. R. McGrath was defendant, as fully and completely as the same still remains on file or of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Fort Scott, in said district of Kansas, this 12 day of May, A. D. 1900.

{ The Seal of the Circuit Court of the United States, Third Division, District of Kansas, 1892. }

GEO. F. SHARITT, *Clerk,*
By S. P. MOSHER, *Deputy Clerk.*

Endorsed on cover: File No., 17,808. Kansas C. C. U. S. Term No., 323. W. C. Lykins and E. W. W. Lykins, plaintiffs in error, *vs.* Mrs. R. McGrath. Filed June 21st, 1900.